

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 10 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0306-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
GERALD RAY TIMMONS)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20031946

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Gerald Ray Timmons

San Luis
In Propria Persona

K E L L Y, Judge.

¶1 In this petition for review, Gerald Timmons challenges the trial court's dismissal of his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court has clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2006).

¶2 A jury found Timmons guilty of armed robbery, aggravated robbery, six counts of kidnapping, and six counts of aggravated assault, all stemming from his role in robbing a local credit union in June 2003. The trial court sentenced him to prison for a total of 30.5 years, and this court affirmed his convictions and sentences on appeal. *State v. Timmons*, No. 2 CA-CR 2004-0058 (memorandum decision filed Oct. 27, 2005).

¶3 Timmons filed a timely notice of post-conviction relief, and the trial court appointed counsel. Counsel eventually filed a “petition” stating she had reviewed the record and “determined that she c[ould] find no issues for review.” The court permitted Timmons to file a pro se petition, which he did in March 2008.

¶4 In his petition, Timmons claimed he was entitled to relief on the following grounds: (1) the trial court abused its discretion in denying his motions pursuant to Rules 20 and 24.1, Ariz. R. Crim. P., for a judgment of acquittal and a new trial based on alleged juror misconduct and prosecutorial misconduct; (2) his constitutional rights were violated by an improper in-court-identification procedure and the lack of a hearing pursuant to *State v. Dessureault*, 104 Ariz. 380, 453 P.2d 951 (1969); (3) trial counsel rendered ineffective assistance in a variety of ways; and (4) appellate counsel also was ineffective.

¶5 In a detailed, twelve-page minute entry, the trial court thoroughly reviewed the relevant factual and procedural history of the case and analyzed each issue Timmons raised, including some that plainly were precluded pursuant to Rule 32.2(a). Finding Timmons had failed to state a colorable claim for relief under Rule 32, the court summarily dismissed the petition pursuant to Rule 32.6(c). The present petition for

review followed. In it, Timmons asks this court to independently review his petition for post-conviction relief which, he claims, the trial court dismissed in error. As Timmons underscores in the petition for review, he is presenting this court with “[n]o new fact[s] or arguments” beyond those presented in his petition below.

¶6 Because the trial court has already clearly articulated, properly analyzed, and correctly resolved Timmons’s claims, there is no need for us to parse, augment, or belabor its detailed ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly identified and ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”). We approve and adopt the trial court’s minute entry. Although we grant the petition for review, we deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge